

**Structured Sentencing and Probation  
A Refresher & Advanced Issues**

Jamie Markham  
April 1, 2009




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**Objectives**

- Address recurring sentencing questions
- Highlight common errors
- Probation, probation, probation
- All with an eye toward tomorrow's session




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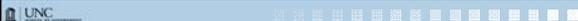
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**Misdemeanor Sentencing**

- What counts for prior record points?
  - PJC always counts (felony or misdemeanor)
  - Infractions and juvenile adjudications never count




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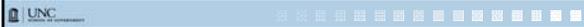
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## Prayer for Judgment Continued

- Three types
  - Final resolution of a case
  - From term to term for a set period
  - To await additional information for sentencing




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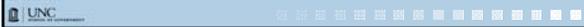
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## Prayer for Judgment Continued

- If the PJC includes conditions that are punishment, it's not a PJC
  - It's entry of judgment, and no further punishment may be imposed
- What amounts to punishment?
  - No: Costs only; requirement to "obey the law"
  - Yes: Fine, jail, restitution, community service, treatment




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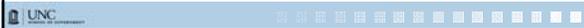
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## Prayer for Judgment Continued

- You must enter judgment in DWI cases and speeding in excess of 25 mph

THE NEWS & OBSERVER




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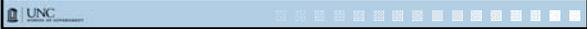
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### Felony Sentencing

- Must have consent of the State, the defendant, and YOU to enter H/I felony plea in district court
- Revocation hearing can be in district court with consent of State and defendant
- Appeal of revocation is to superior court



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### Felony Sentencing

- Watch out for stipulations to “substantial similarity” of out-of-state convictions
  - Defendant can’t stipulate to a question of law
  - *Palmateer* and many other recent cases



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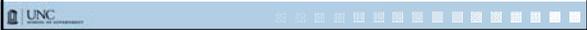
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### Probation

- Watch out for this year's legislative summary...



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### Length of Probation Term

#### Misdemeanors

Community: 6 – 18 months

Intermediate: 12 – 24 months

#### Felonies

Community: 12 – 30 months

Intermediate: 18 – 36 months

Up to 5 years with finding (check the box!)



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### Extending Probation

- Two types: ordinary and special



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### Extending Probation: Ordinary

- At any time prior to expiration *for good cause shown* you may extend probation to the 5-year maximum



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### Extending Probation: Illustration

- 1 Feb 2001: 36-month probation begins
- 1 Feb 2004: probation set to expire
- 26 Feb 2004: defendant consents to 24-month extension (to Feb 2006)
- 9 January 2006: defendant consents to another 24-month extension (to Feb 2008)
- Probation revoked on 30 April 2007

State v. Satanek (2008)



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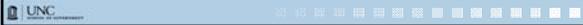
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### Extending Probation: Special

- Extension by up to 3 years beyond the *original* period if:
  - Probationer consents;
  - During last 6 months of *original* period; *and*
  - Extension is for restitution or medical or psychiatric treatment
- This is the only way probation may extend beyond 5 years



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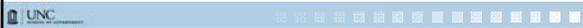
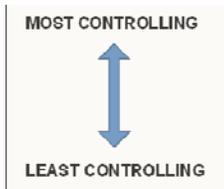
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### Intermediate Punishment

- Supervised probation + at least one of:
  - Special probation (split sentence)
  - Residential program
  - Electronic House Arrest
  - Day Reporting Center
  - Drug Treatment Court
  - Intensive probation



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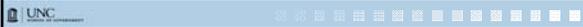
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## Special Probation

- Total active component capped at  $\frac{1}{4}$  the maximum sentence imposed
- Active portions must be complete within 2 years of conviction
- Pretrial confinement credit: your choice
  - Credit to the active portion of the split, *or*
  - Credit to the suspended sentence



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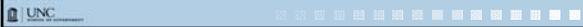
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## Domestic Violence Treatment

- A regular condition of probation for domestic violence offenders
  - Attend a Domestic Violence Commission–approved treatment program
  - Unless you decide “not in the best interests of justice”



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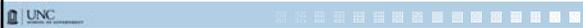
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## Sex Crimes

- Mandatory conditions for sex offenders and crimes involving abuse of a minor
  - Sexual abuse: not reside in household with a minor
  - Physical or mental abuse: only reside in household with minor if abuse unlikely and in minor’s best interest
- Sex offender control program
- If you want to talk GPS, call me



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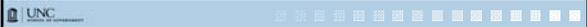
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### G.S. 90-96

- Conditional discharge for drug offenses
- Anyone who pleads or is found guilty of:
  - Mdm possession of Sched II through VI CS
  - Drug paraphernalia
  - Felony possession of less than 1 g. cocaine
- Probation without entry of judgment, typically with drug education school
- If successful, charge dismissed
- Defendants under 22 eligible for expunction




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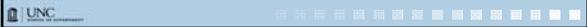
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### Probation Violation Hearings

- Preliminary hearings
  - Within 7 working days of arrest, to determine PC
  - Only required if detained on PV only
  - If not held within 7 working days, release probationer
- Probably can be done by district court judge, even in superior court cases
- Many probationers probably entitled to counsel




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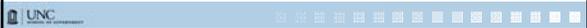
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### Probation Violation Hearings

- Final violation hearing
  - Counsel
    - Waiver of counsel must comply with G.S. 15A-1242. Common error!
    - State v. Jackson (2008)




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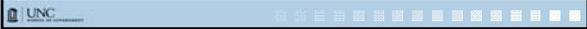
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### Types of Violations

- Failure to pay money—be sure to consider good faith inability to pay
- Absconding—defined by DCC regulation
- New crimes:
  - Don't revoke probation based on a "charge"
  - Don't revoke probation after an acquittal
  - Don't revoke probation solely for Class 3 mdm




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### Your Options at the Hearing

- Continue
- Modify: Upon violation, you may add Intermediate conditions
- Extend
- Contempt: Requires plenary proceeding
- Terminate: You can do this any time
- Revoke




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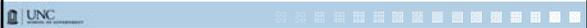
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### Options at Revocation

- You may reduce the suspended sentence
- Revoking judge may choose to run the activated sentence consecutive to or concurrent with other sentences, without regard to the original judgment




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### Hearings Held after Expiration

- G.S.15A-1344(f) grants jurisdiction to hear a probation violation hearing after expiration
- 2008 amendments:
  - “Court may extend, modify, or revoke”
  - Finding of State’s “reasonable efforts” to notify the defendant and hold the hearing earlier NO LONGER REQUIRED
- Effective for hearings held after Dec. 1, 2008




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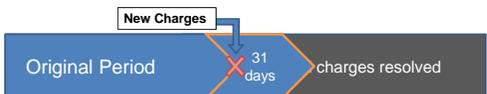
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### Tolling for New Charges

- A new charge for an offense other than a Class 3 misdemeanor automatically tolls probation




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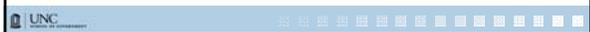
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### Credit Rules

- When you activate a sentence, credit:
  - Pretrial confinement
  - Time jailed awaiting revocation hearing
  - Time served under active portion of split
  - Time spent at DART-Cherry
  - Time spent imprisoned for contempt under G.S. 15A-1344(e1)
- No credit for home detention under EHA




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Questions?



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### Gang Legislation

- Enhancement for misdemeanors committed for the benefit of a “criminal street gang”
- Even in non-enhancement cases, you must determine whether a crime is “criminal street gang activity”



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